

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD.

SPECIAL CIVIL APPLICATION No 6781 of 1997

For Approval and Signature :

Hon'ble MR. JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the Judgment ?
  2. To be referred to the Reporter or not?
  3. Whether Their Lordships wish to see the fair copy of the Judgment ?
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge?
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JATIN SHANTILAL MAHETA

VERSUS

STATE OF GUJARAT

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Appearance:

MR BP MUNSHI for the Petitioner

MR VB GHARANIA for the Respondents No.1 and 2

MR CHAUHAN for the Respondents No.3 and 4

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CORAM : MR JUSTICE S.K. KESHOTE

Date of decision: 22/06/99

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C.A.V. JUDGMENT

Heard the learned counsel for the parties.

2. The petitioner by this petition under Article 226 of the Constitution has prayed for issuance of a writ of mandamus and/or writ in the nature of mandamus and/or, appropriate writ, order or direction directing the respondents to appoint the petitioner as Clerk/Typist and grant the benefits of running payscale of Rs.950-1500 with D.A. and other allowances and benefits for the leave encashment etc. as permissible under rules with retrospective effect in the interest of justice.

3. It is not in dispute that on 13th July, 1987, the petitioner was engaged as daily wager by the respondent NO.4. Under the Government resolution dated 17th October, 1988, the petitioner has been given the benefit of regular pay scale of Class IV employees. This has been given as the petitioner was taken to be working as Class IV employee on daily wages. This benefit has been accepted by the petitioner without any protest.

4. Learned counsel for the petitioner contends that the Government has decided under the resolution dated 30th October, 1991 to give the pay scale of Rs.950-1500 to those daily wagers who have worked for seven years and are S.S.C. passed. The petitioner has already worked for seven years as daily wager and is S.S.C. passed and as such he is entitled for this pay scale in the regular cadre.

5. I do not find any merits in this contention. Leaving apart whether this resolution is adopted by the Board or not, the resolution can not be read in the way and in the manner in which it is sought to be read by the counsel for the petitioner. This resolution has been passed to give the pay scale of Rs.950-1500 to those daily wagers who have been engaged in clerical service where they are S.S.C. passed and worked for seven years, but it does not mean that those employees who have been appointed as daily wagers as Class IV employees they are entitled for these benefits. The petitioner has been appointed as Class IV employee on daily wages and this position is not disputed by the learned counsel for the petitioner. In the alternate, the learned counsel for the petitioner contended that though the petitioner has been appointed as daily wager Class IV but the respondents were taking the work of clerk from him and as such he is entitled for the benefit of this resolution. However, the learned counsel for the petitioner, on being asked by the court,

is unable to show any pleadings from the record that the petitioner was working as clerk and the respondents were taking from him the work of clerk for all these years though he has been appointed as daily wager Class IV employee. He referred to the pleadings as contention in para-11 of the special civil application. Para-11 of the special civil application reads as under:

11. The petitioner submits that in the meantime, the State Government of Gujarat, Roads & Buildings Department, by Resolution dt. 30/10/1991 had decided to entrust the clerical work to such work charge employees working in the pay scale of 950-1500 and accordingly, the petitioner also used to discharge his duties accordingly. A copy of the said resolution dated 1/5/1991 is annexed hereto and marked as Annexure : D to this petition.

From reading of these pleadings, it is difficult to take what to accept that the respondents were taking the work of clerk from the petitioner. It is also not the admitted case of the respondents. Otherwise also, even if it is taken for the sake of arguments that at any point of time the respondents have taken the work from the petitioner of clerical nature then at the most he may be entitled for the difference of salaries of two posts but not the status of clerical category as well as the pay scale.

6. This special civil application is wholly misconceived and the same is dismissed. Rule discharged. Interim relief, if any, granted by this Court stands vacated. No order as to costs.

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